

SEP 21 1942

CHARLES E. BROWN
Clerk
U.S. Supreme Court

SUPREME COURT OF THE UNITED STATES.

October Term, 1942.

**Lydia E. Pinkham Medicine Company,
Petitioner,**

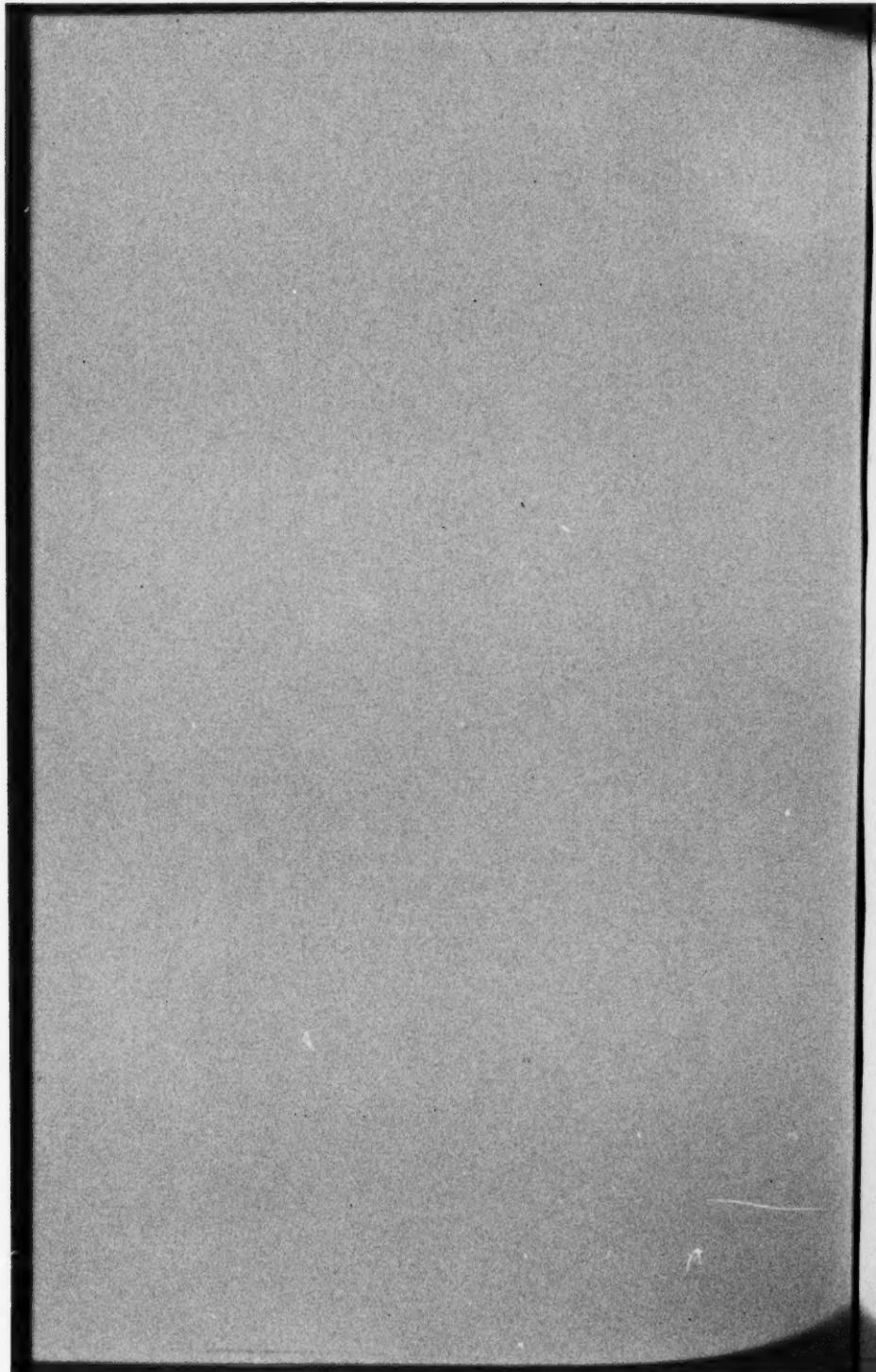
v.

**Commissioner of Internal Revenue,
Respondent.**

Petition for Writ of Certiorari to the Circuit
Court of Appeals for the First Circuit
and
Brief in Support Thereof.

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Supreme Court of the United States.

OCTOBER TERM, 1942.

LYDIA E. PINKHAM MEDICINE COMPANY,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
CIRCUIT COURT OF APPEALS FOR THE FIRST
CIRCUIT.

Now comes Lydia E. Pinkham Medicine Company, a corporation duly organized and existing under the laws of the State of Maine, and having its principal place of business in Lynn, Massachusetts, and respectfully petitions this Court to issue a writ of certiorari directed to the Circuit Court of Appeals for the First Circuit; and in support of this petition respectfully says:

I. Statement of the Matter Involved.

This proceeding originated with a petition that the Board of Tax Appeals redetermine an alleged deficiency in income taxes assessed against the petitioner for the years 1936 and 1937. The deficiency was based on total

disallowance of petitioner's claim for amounts paid by petitioner as sole compensation to its treasurer and assistant treasurer in the years concerned.

The petitioner's by-laws provided for equal division of its capital stock into "Pinkham stock" and "Gove stock," respectively; that the president, first vice-president, secretary, and three of the six members of the Board of Directors, should always be holders of or beneficially interested in Pinkham stock, and that the treasurer, assistant treasurer, and three members of the Board of Directors should always be holders of or beneficially interested in Gove stock; that the total compensation for services of officers or directors holding or beneficially interested in Pinkham stock should always be equal to that of officers or directors holding or beneficially interested in Gove stock; and that compensation allocated to officers and directors holding or beneficially interested in each class of stock should be allocated among them, not by the corporation, but in the sole discretion of a majority of the directors of that class.

The volume of petitioner's business in the two years was approximately \$1,244,000 and \$1,422,000; and its net income approximately \$504,000 and \$429,000, respectively. The total compensation for services of treasurer, assistant treasurer, purchasing agent and the three Gove members of the Board of Directors was \$30,000, of which, pursuant to allocation by a majority of the Gove directors, the company paid \$21,000 to Aroline P. Gove, treasurer and director, and \$8000 to Lydia P. Gove, assistant treasurer, purchasing agent and director.

The Commissioner of Internal Revenue disallowed deduction of all compensation paid in 1936 and 1937 to these officers and directors. The Board of Tax Appeals allowed the deduction only in the sums of \$2500 for Aroline P. Gove, treasurer and director, and \$5000 for Lydia P.

Gove, assistant treasurer, purchasing agent and director; basing this decision primarily on the following:

- (1) A comparison of the amounts assigned or allocated by a majority of Gove directors to Aroline P. Gove and Lydia P. Gove, respectively, with the amounts assigned or allocated by a majority of the Pinkham directors in their discretion to Arthur W. Pinkham, president of the company, and other Pinkham officers and directors; stating that "these are the best comparisons available in the record"; and
- (2) The alleged difficulty or impossibility of segregation of services actually rendered by Aroline P. Gove from those actually rendered by Lydia P. Gove.

The Circuit Court of Appeals affirmed the decision of the Board of Tax Appeals, holding that the difficulty of the Board in segregating the activities of Aroline P. Gove from those of Lydia P. Gove "bears heavily against" the petitioner; and that

"The Board was entirely justified in comparing the services rendered by Aroline and Lydia with the services rendered by the other officers and in concluding that the sums paid to Aroline and Lydia were not commensurate with the value of the work done by them for the corporation."

II. Jurisdiction.

The jurisdiction of this Court is invoked under section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

III. Questions Presented.

(1) Where the effect of the petitioner's by-laws and of its compliance therewith is (a) that its officers and directors are compensated as a group or groups, for their personal services actually rendered to the petitioner, and (b) that portions of this total group compensation are allotted or assigned to one or more of the individual officers and directors, by and in the sole discretion of a majority of the directors of that group, without necessary or suggested reference to the extent or worth of their respective services:

Is the petitioner not entitled to have the deductibility of such payments judged solely by the reasonableness of the aggregate compensation of each group as such, without reference to differentiation of the services of one member of a group from those of another member thereof, and without reference to a comparison between the various members of each group, with respect to the services rendered by and moneys allotted and paid to them respectively?

(2) Where the total amounts paid by a corporation to its officers as compensation for their services are determined by it, but where the allocation of the several portions of this total compensation among the officers is made not by the corporation but by others, without necessary or suggested reference to the extent of services rendered by the respective allottees, and the payments by the corporation to the latter must be and are simply in accordance with such allotments:

(a) Is a segregation of the services rendered by each of these officers from those of each other officer relevant to a determination of the reasonableness of the payments so made by the corporation; and

(b) Is a comparison of the amounts so allotted and paid to one officer relevant to the reasonableness of the amounts so allocated and paid to another officer, in determining the propriety of the deduction of the latter amount?

IV. Reasons for Granting the Writ.

(1) The deductibility of group compensation as such, for personal services actually rendered to a corporation by its officers, and the bases for determination of such deductibility are important questions of federal law which have not been, but should be, settled by this Court.

(2) The Board of Tax Appeals erred in basing its determination, as to the reasonableness of payments made to a virtual assignee, on the services rendered by the assignee rather than by the assignors, and on a comparison of the services by and payments to one assignee with those by and to another assignee. The Circuit Court of Appeals in affirming said decision of the Board of Tax Appeals has decided a federal question in a way probably in conflict with applicable decisions of this Court.

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